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7
8 **UNITED STATES BANKRUPTCY COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA, RIVERSIDE DIVISION**

10 In re
11 PHILMAR CARE, LLC,
12 Debtor.

Case No. 6:18-bk-20286-WJ

Chapter 7

Adv. No.

**COMPLAINT FOR (1) AVOIDANCE AND
RECOVERY OF PREFERENTIAL
TRANSFERS; (2) AVOIDANCE AND
RECOVERY OF FRAUDULENT
TRANSFERS; (3) AVOIDANCE AND
RECOVERY OF UNLAWFUL
DISTRIBUTIONS; (4) PRESERVATION
OF AVOIDED TRANSFERS; (5)
ACCOUNTING; AND (6)
DISALLOWANCE OF CLAIMS**

DATE:
TIME: [To Be Set By Summons]
PLACE:

20 HOWARD M. EHRENBURG, solely in his
21 capacity as chapter 7 trustee,

22 Plaintiff,

23 vs.

24 BENCION JAKOBOVITS, an individual,

25 Defendant.
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For his “Complaint For (1) Avoidance And Recovery of Preferential Transfers, (2) Avoidance And Recovery of Fraudulent Transfers, (3) Avoidance and Recovery of Unlawful Distributions, (4) Preservation of Avoided Transfers, (5) Accounting; and (6) Disallowance of Claims” (the “Complaint”), plaintiff Howard M. Ehrenberg (the “Trustee” or “Plaintiff”), the duly appointed, qualified, and acting chapter 7 trustee for the bankruptcy estate of Philmar Care, LLC (the “Debtor”), hereby alleges as follows:

STATEMENT OF JURISDICTION, NATURE OF PROCEEDING, AND VENUE

1. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 157(b)(1) and 1334(a). This action is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (B), (F), (H), and (O). This action is a proceeding arising in and/or related to the bankruptcy case of In re Philmar Care, LLC, bearing Case No. 6:18-bk-20286-WJ (the “Bankruptcy Case”), which is a case under chapter 7 of title 11 of the United States Code, 11 U.S.C. § 101 et seq. (the “Bankruptcy Code”), and which is pending in the United States Bankruptcy Court for the Central District of California, Riverside Division (the “Bankruptcy Court” or “Court”). Regardless of whether this proceeding is core, non-core, or otherwise, Plaintiff consents to the entry of a final order and judgment by the Bankruptcy Court. Defendant (defined below) is hereby notified that Rule 7008 of the Federal Rules of Bankruptcy Procedure requires defendants to plead whether consent is given to the entry of a final order and judgment by the Bankruptcy Court.

2. Venue properly lies in this judicial district pursuant to 28 U.S.C. §§ 1408 and 1409.

PARTIES AND ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF

3. Plaintiff is the chapter 7 trustee for the Debtor’s bankruptcy estate (the “Estate”) and its respective creditors. Plaintiff brings this action solely in his capacity as chapter 7 trustee for the Estate and its creditors. To the extent that Plaintiff hereby asserts claims under 11 U.S.C. § 544(b), Plaintiff is informed and believes, and on that basis alleges thereon, that there exists in this Bankruptcy Case one or more creditors

1 holding unsecured claims allowable under 11 U.S.C. § 502 or that are not allowable only
2 under 11 U.S.C. § 502(e) who could have avoided the respective transfers or obligations
3 under California or other applicable law before the Petition Date.

4 4. As alleged below, Plaintiff was appointed as chapter 11 trustee, and
5 then as chapter 7 trustee, after the Debtor commenced this Bankruptcy Case. As a
6 result, Plaintiff does not have personal knowledge of the facts alleged in this Complaint
7 that occurred prior to his appointment and, therefore, alleges all those facts on
8 information and belief. Plaintiff reserves the right to amend this Complaint to allege
9 additional claims against Defendant and to challenge and recover transfers made to or
10 for the benefit of Defendant in addition to those transfers alleged in this Complaint.

11 5. Defendant Bencion Jakobovits ("Defendant") is an individual who,
12 Plaintiff is informed and believes, and based thereon alleges, is, or, at all relevant times,
13 was, residing in the State of California. Plaintiff is informed and believes, and based
14 thereon alleges, that Defendant is, or at all relevant times was, a member of the Debtor
15 and owned equity interests in the Debtor. Plaintiff is further informed and believes, and
16 based thereon alleges, that Defendant was an entity for whose benefit certain of the
17 avoidable and recoverable transfers alleged in this Complaint were made and/or
18 transferees of such transfers.

19 6. Plaintiff is informed and believes that, as of the Petition Date (defined
20 below), the Debtor was the licensed operator of a 204 bed skilled nursing facility
21 commonly known as the "San Fernando Post-Acute Hospital" (the "Facility"), which was
22 being operated pursuant to that "Lease and Skilled Care Nursing Facility Operator's
23 Agreement" (the "Lease") dated January 1, 2008, by and between El Sereno Manor, Inc.
24 ("El Sereno"), as lessor, and the Debtor, as lessee.

25 7. On March 8, 2017, the Facility was cited by the California
26 Department of Healthcare Services ("DHS") to correct various deficiencies. Although the
27 Debtor claims it was able to resolve the deficiencies cited by the DHS, the Centers for
28 Medicare and Medicaid Services ("CMS") designated the Facility as a "Special Focus

1 Facility” (the “SF Designation”).

2 8. As the payroll tax liabilities of the Debtor began to mount as a result
3 of the continuous imposition of penalties and fees, in or about June 2016, the Debtor
4 employed a healthcare broker in order to market the Facility and generate proceeds
5 sufficient to satisfy the liabilities of the Debtor, including, but not limited to the outstanding
6 payroll tax liabilities. In the course of that process, the Debtor reached an agreement
7 with its lessor by which the lessor would create a single purpose entity for the purpose of
8 participating in the sale process and resolving other matters unrelated to the Facility. To
9 this end, on or about August 31, 2018, Golden State Health Centers, Inc. (“Golden
10 State”), El Sereno, Martin Weiss, Hadassah Weiss, the Debtor, P & M Management, Inc.,
11 Phillip Weinberger, Marylynn Mahan, Mesa Glen Holdings, LLC, Sela Healthcare, Inc.,
12 Silverscreen Healthcare, Inc., and P & M Holdings Corporation (collectively, the “MOU
13 Parties”) entered a “Memorandum of Understanding” (the “MOU”). Pursuant to the MOU,
14 among other things, a management agreement by and between the Debtor and Foothill
15 Legacy, LLC (the “Foothill Management Agreement”), was finalized by and between the
16 Debtor and Foothill Legacy, LLC (“Foothill”) (an affiliate of Golden State). In accordance
17 with the terms of the Foothill Management Agreement, as of August 31, 2018, Foothill
18 assumed all operational responsibility for the Facility, and continued to act as the
19 manager and operator of the Facility.

20 9. Aside from the liabilities, if any, due and owing to Foothill and/or
21 certain other MOU Parties under the MOU or the Foothill Management Agreement, the
22 Internal Revenue Service (the “IRS”) filed a proof of claim in the amount of
23 \$5,191,277.91, later amended to \$5,086,554.65, of which \$3,919,604.87 is alleged to be
24 a secured claim, with liabilities extending at least as far back as 2014. In addition,
25 Plaintiff is informed and believes, and based thereon alleges, that the Employment
26 Development Department of the State of California (the “EDD”) is owed approximately
27 \$550,000 in unpaid taxes, and that the DHS is owed approximately \$500,000 to
28 \$1,000,000 in Quality Assurance Fees.

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10. Furthermore, Plaintiff is informed and believes, and based thereon alleges, that due to the Debtor's failure to remit approximately \$1,300,000 of a \$3,300,000 overpayment made by Medi-Cal, as of the Petition Date, the Debtor's Medi-Cal payments were not being made until the full amount of the unreturned overpayment is recouped and/or offset. Plaintiff is informed and believes, and based thereon alleges, that, as of on or about the Petition Date, the amount that was remaining to be recouped and/or offset by Medi-Cal was approximately \$500,000 to \$750,000.

11. Finally, Plaintiff is informed and believes, and based thereon alleges, that, as of the Petition Date, Foothill and the IRS were asserting a security interest in most, if not all, of the Debtor's assets, including, without limitation, inventory, equipment, accounts receivable (including healthcare insurance receivables), fixtures, and general intangibles, and, prior to the Petition Date, the EDD was levying on one of the Debtor's bank accounts to satisfy its pre-petition claim.

12. Plaintiff is informed and believes, and based thereon alleges, that during a time when the Debtor was in a precarious financial state - having received the SF Designation, incurred significant payroll tax liabilities, and fallen significantly behind on its obligations to the IRS, the EDD, and the DHS, with certain liabilities relating to periods at least as far back as 2014 - and further exacerbating the Debtor's unstable financial condition, Weinberger and/or Mahan were draining cash from the Debtor, including, but not limited to, cash received by virtue of the substantial Medi-Cal overpayments by, among other things, causing the Debtor to make large payments, distributions, or other transfers to or for the benefit of Defendant.

13. On December 7, 2018 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court, Central District of California, Riverside Division, commencing the above-captioned case.

14. On December 10, 2018, the Debtor then filed a second voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States

1 Bankruptcy Court, Central District of California, San Fernando Valley Division (bearing
2 Case No. 1:18-bk-12966-MB) (the “Second Case”).

3 15. On December 21, 2018, the Court entered its “Order to Show Cause
4 Regarding Appointment of a Chapter 11 Trustee or Conversion of the Case to Chapter
5 7”.

6 16. On January 4, 2019, the bankruptcy court in the Second Case
7 entered its “Order Dismissing Bankruptcy Case As of January 4, 2019 [Second Case Dkt.
8 No. 24]”, resulting in the dismissal of the Second Case as of January 4, 2019.

9 17. On January 8, 2019, the Court appointed a chapter 11 trustee in the
10 present bankruptcy case. At or about that time, Plaintiff was appointed as the chapter 11
11 trustee the Bankruptcy Case.

12 18. Upon Plaintiff’s motion, the Bankruptcy Case was converted to
13 chapter 7 on or about April 19, 2019, at which time Plaintiff was appointed to serve as the
14 chapter 7 trustee in the Bankruptcy Case and continues to serve in such capacity.

15 **FIRST CLAIM FOR RELIEF**

16 **(Avoidance of Preferential Transfers Pursuant to 11 U.S.C. § 547)**

17 19. Plaintiff realleges and incorporates herein by reference each and
18 every allegation contained in paragraphs 1 through 18 as though set forth in full.

19 20. Plaintiff is informed and believes, and based thereon alleges, that the
20 Debtor made one or more transfers of property in the form of payments to Defendant
21 during the 90-day period prior to the Petition Date in the aggregate amount to be
22 determined (collectively, the “90-Day Preferential Transfers”).

23 21. Plaintiff is informed and believes, and based thereon alleges, that the
24 90-Day Preferential Transfers were made to or for the benefit of Defendant.

25 22. Plaintiff is informed and believes, and based thereon alleges, that the
26 90-Day Preferential Transfers satisfy the definition of “transfers” as that term is defined in
27 11 U.S.C. § 101(54).

28 23. Plaintiff is informed and believes, and based thereon alleges, that the

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90-Day Preferential Transfers were transfers of interests of the Debtor in property.

24. Plaintiff is informed and believes, and based thereon alleges, that the 90-Day Preferential Transfers were made for or on account of antecedent debts owed by the Debtor to Defendant before the 90-Day Preferential Transfers, and each of them, were made.

25. Plaintiff is informed and believes, and based thereon alleges, that the 90-Day Preferential Transfers were made while the Debtor was insolvent, and, in any event, the Debtor is presumed to have been insolvent at the time the 90-Day Preferential Transfers, and each of them, were made pursuant to 11 U.S.C. § 547(f).

26. Plaintiff is informed and believes, and based thereon alleges, that, given the financial condition of the Estate, the 90-Day Preferential Transfers enabled Defendant to receive more than Defendant would have received if (a) this Bankruptcy Case was a case under chapter 7 of the Bankruptcy Code; (b) the 90-Day Preferential Transfers had not been made; and (c) Defendant received payments of such debts to the extent provided by the Bankruptcy Code.

27. Plaintiff is informed and believes, and based thereon alleges, that interest on the 90-Day Preferential Transfers has accrued and continues to accrue from the date the 90-Day Preferential Transfers, and each of them, were made.

28. Plaintiff is informed and believes, and based thereon alleges, that, based on the foregoing, Plaintiff may avoid the 90-Day Preferential Transfers pursuant to 11 U.S.C. § 547.

SECOND CLAIM FOR RELIEF

(Avoidance of Preferential Transfers Pursuant to 11 U.S.C. § 547)

29. Plaintiff realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 28 as though set forth in full.

30. Plaintiff is informed and believes, and based thereon alleges, that Defendant is an insider of the Debtor as the term "insider" is defined by 11 U.S.C. § 101(31) and applicable case law.

1 31. Plaintiff is informed and believes, and based thereon alleges, that the
2 Debtor made one or more transfers of property in the form of payments to Defendant
3 during the 1-year period prior to the Petition Date in the aggregate amount to be
4 determined (collectively, the “1-Year Preferential Transfers,” and together with the 90-
5 Day Preferential Transfers, the “Preferential Transfers”). Plaintiff is informed and believes,
6 and based thereon alleges, that the 1-Year Preferential Transfers were made to or for the
7 benefit of Defendant.

8 32. Plaintiff is informed and believes, and based thereon alleges, that the
9 1-Year Preferential Transfers satisfy the definition of “transfers” as that term is defined in
10 11 U.S.C. § 101(54).

11 33. Plaintiff is informed and believes, and based thereon alleges, that the
12 1-Year Preferential Transfers were transfers of interests of the Debtor in property.

13 34. Plaintiff is informed and believes, and based thereon alleges, that the
14 1-Year Preferential Transfers were for or on account of antecedent debts owed by the
15 Debtor to Defendant before the 1-Year Preferential Transfers, and each of them, were
16 made.

17 35. Plaintiff is informed and believes, and based thereon alleges, that the
18 1-Year Preferential Transfers were made while the Debtor was insolvent.

19 36. Plaintiff is informed and believes, and based thereon alleges, that,
20 given the financial condition of the Estate, the 1-Year Preferential Transfers enabled
21 Defendant to receive more than Defendant would have received if (a) this Bankruptcy
22 Case was a case under chapter 7 of the Bankruptcy Code; (b) the 1-Year Preferential
23 Transfers had not been made; and (c) Defendant received payments of such debt to the
24 extent provided by the Bankruptcy Code.

25 37. Plaintiff is informed and believes, and based thereon alleges, that
26 interest on the 1-Year Preferential Transfers has accrued and continues to accrue from
27 the date the 1-Year Preferential Transfers, and each of them, were made.

28 38. Plaintiff is informed and believes, and based thereon alleges, that,

1 based on the foregoing, Plaintiff may avoid the 1-Year Preferential Transfers pursuant to
2 11 U.S.C. § 547.

3 **THIRD CLAIM FOR RELIEF**

4 **(Avoidance of Fraudulent Transfers Pursuant to 11 U.S.C. § 544(b) and California**
5 **Civil Code §§ 3439.04(a)(2) and 3439.07)**

6 39. Plaintiff realleges and incorporates herein by reference each and
7 every allegation contained in paragraphs 1 through 18 as though set forth in full.

8 40. Plaintiff is informed and believes, and based thereon alleges, that the
9 Debtor made one or more transfers of property in the form of payments to Defendant
10 during the 4-year period prior to the Petition Date in the aggregate amount to be
11 determined, but not less than \$70,000 (collectively, the “4-Year Constructive Fraudulent
12 Transfers”).

13 41. Plaintiff is informed and believes, and based thereon alleges, that the
14 Debtor made the 4-Year Constructive Fraudulent Transfers (a) without receiving a
15 reasonably equivalent value in exchange for such transfers, and the Debtor either (i) was
16 engaged or was about to engage in a business or a transaction for which the remaining
17 assets of the Debtor were unreasonably small in relation to the business or transaction,
18 or (ii) intended to incur, or believed or reasonably should have believed that it would
19 incur, debts beyond its ability to pay as they became due, because, without limitation: (a)
20 such transfers were made during a time when the Debtor was in a precarious financial
21 state - having received the SF Designation, incurred significant payroll tax liabilities, and
22 fallen significantly behind on its obligations to the IRS, the EDD, and the DHS (among
23 others); and (b) the Debtor placed the funds comprising the 4-Year Constructive
24 Fraudulent Transfers out of reach of the Estate and its creditors.

25 42. Plaintiff is informed and believes, and based thereon alleges, that, at
26 all relevant times, the 4-Year Constructive Fraudulent Transfers were voidable under
27 California Civil Code §§ 3439.04(a)(2) and 3439.07 by one or more creditors who held
28 and hold unsecured claims against the Debtor that were and are allowable under 11

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1 U.S.C. § 502 or that were and are not allowable only under 11 U.S.C. § 502(e). These
2 creditors include those creditors who are listed in the Debtor's schedules as holding
3 undisputed claims or who have filed proofs of claim against the Estate.

4 43. Plaintiff is informed and believes, and based thereon alleges, that,
5 based on the foregoing, Plaintiff may avoid the 4-Year Constructive Fraudulent Transfers.

6 **FOURTH CLAIM FOR RELIEF**

7 **(Avoidance of Fraudulent Transfers Pursuant to 11 U.S.C. § 548(a)(1)(B))**

8 44. Plaintiff realleges and incorporates herein by reference each and
9 every allegation contained in paragraphs 1 through 18, and paragraphs 39 through 43, as
10 though set forth in full.

11 45. Plaintiff is informed and believes, and based thereon alleges, that the
12 Debtor made one or more transfers of property in the form of payments to Defendant
13 during the 2-year period prior to the Petition Date in the aggregate amount to be
14 determined, but not less than \$15,000 (collectively, the "2-Year Constructive Fraudulent
15 Transfers," and together with the 4-Year Constructive Fraudulent Transfers, the
16 "Constructive Fraudulent Transfers").

17 46. Plaintiff is informed and believes, and based thereon alleges, that the
18 Debtor received less than a reasonably equivalent value in exchange for the 2-Year
19 Constructive Fraudulent Transfers, and (a) the Debtor was insolvent on the date that
20 such transfers were made or became insolvent as a result of such transfers, (b) the
21 Debtor was engaged in business or a transaction, or was about to engage in business or
22 a transaction, for which any remaining property remaining with the Debtor was an
23 unreasonably small capital, or (c) the Debtor intended to incur, or believed that it would
24 incur, debts that would be beyond its ability to pay as such debts matured.

25 47. Plaintiff is informed and believes, and based thereon alleges, that, at
26 all relevant times, the 2-Year Constructive Fraudulent Transfers were voidable under 11
27 U.S.C. § 544(b) by one or more creditors who held and hold unsecured claims against
28 the Debtor that were and are allowable under 11 U.S.C. § 502 or that were and are not

allowable only under 11 U.S.C. § 502(e). These creditors include those creditors who are listed in the Debtor's schedules as holding undisputed claims or who have filed proofs of claim against the Estate.

48. Plaintiff is informed and believes, and based thereon alleges, that, based on the foregoing, Plaintiff may avoid the 2-Year Constructive Fraudulent Transfers.

FIFTH CLAIM FOR RELIEF

(Avoidance of Fraudulent Transfers Pursuant to 11 U.S.C. § 544(b) and California Civil Code §§ 3439.04(a)(1) and 3439.07)

49. Plaintiff realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 18, and paragraphs 39 through 48, as though set forth in full

50. Plaintiff is informed and believes, and based thereon alleges, that the Debtor made one or more transfers of property in the form of payments to Defendant during the 4-year period prior to the Petition Date in the aggregate amount to be determined, but not less than \$70,000 (collectively, the "4-Year Actual Fraudulent Transfers").

51. Plaintiff is informed and believes, and based thereon alleges, that the Debtor made the 4-Year Actual Fraudulent Transfers with intent to hinder, delay, and/or defraud creditors of the Debtor in that, without limitation, the 4-Year Actual Fraudulent Transfers were: (a) transfers to an insider of the Debtor; (b) made at a time when the Debtor was sued or threatened with suit as set forth in the Debtor's Statement of Financial Affairs; (c) made at a time when the EDD and potentially other creditors were levying on the Debtor's assets or otherwise enforcing claims and liens against the Debtor; (d) made in exchange for less than a reasonably equivalent value; (e) were made shortly before or shortly after the Debtor incurred substantial debt and during a time when the Debtor was in a precarious financial state - having received the SF Designation, incurred significant payroll tax liabilities, and fallen significantly behind on its obligations to the IRS, the EDD, and the DHS (among others).

52. Plaintiff is informed and believes, and based thereon alleges, that, at all relevant times, the 4-Year Actual Fraudulent Transfers were voidable under California Civil Code §§ 3439.04(a)(1) and 3439.07 by one or more creditors who held and hold unsecured claims against the Debtor that were and are allowable under 11 U.S.C. § 502 or that were and are not allowable only under 11 U.S.C. § 502(e). These creditors include those creditors who are listed in the Debtor's schedules as holding undisputed claims or who have filed proofs of claim against the Estate.

53. Plaintiff is informed and believes, and based thereon alleges, that, based on the foregoing, Plaintiff may avoid the 4-Year Actual Fraudulent Transfers.

SIXTH CLAIM FOR RELIEF

(Avoidance of Fraudulent Transfers Pursuant to 11 U.S.C. § 548(a)(1)(A))

54. Plaintiff realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 18, and paragraphs 39 through 53, as though set forth in full.

55. Plaintiff is informed and believes, and based thereon alleges, that the Debtor made one or more transfers of property in the form of payments to Defendant during the 2-year period prior to the Petition Date in the aggregate amount to be determined, but not less than \$15,000 (collectively, the "2-Year Actual Fraudulent Transfers," and together with the 4-Year Actual Fraudulent Transfers, the "Actual Fraudulent Transfers").

56. Plaintiff is informed and believes, and based thereon alleges, that the Debtor made the 2-Year Actual Fraudulent Transfers with intent to hinder, delay, and/or defraud creditors of the Debtor in that, without limitation, the 2-Year Actual Fraudulent Transfers were: (a) transfers to an insider of the Debtor; (b) made at a time when the Debtor was sued or threatened with suit as set forth in the Debtor's Statement of Financial Affairs; (c) made at a time when the EDD and potentially other creditors were levying on the Debtor's assets or otherwise enforcing claims and liens against the Debtor; (d) made in exchange for less than a reasonably equivalent value; (e) were made shortly

1 before or shortly after the Debtor incurred substantial debt and during a time when the
2 Debtor was in a precarious financial state - having received the SF Designation, incurred
3 significant payroll tax liabilities, and fallen significantly behind on its obligations to the
4 IRS, the EDD, and the DHS (among others).

5 57. Plaintiff is informed and believes, and based thereon alleges, that, at
6 all relevant times, the 2-Year Actual Fraudulent Transfers were voidable under California
7 Civil Code §§ 3439.04(a)(1) and 3439.07 by one or more creditors who held and hold
8 unsecured claims against the Debtor that were and are allowable under 11 U.S.C. § 502
9 or that were and are not allowable only under 11 U.S.C. § 502(e). These creditors
10 include those creditors who are listed in the Debtor's schedules as holding undisputed
11 claims or who have filed proofs of claim against the Estate.

12 58. Plaintiff is informed and believes, and based thereon alleges, that,
13 based on the foregoing, Plaintiff may avoid the 2-Year Actual Fraudulent Transfers.

14 **SEVENTH CLAIM FOR RELIEF**

15 **(Unlawful Distributions Pursuant to Cal. Corp. Code §§ 17704.05 and 17704.06)**

16 59. Plaintiff realleges and incorporates herein by reference each and
17 every allegation contained in paragraphs 1 through 58 as though set forth in full.

18 60. Plaintiff is informed and believes, and based thereon alleges, that the
19 Debtor made one or more transfers of property in the form of distributions to Defendant
20 during the 4-year period prior to the Petition Date in the aggregate amount to be
21 determined, but not less than \$70,000 (collectively, the "Unlawful Distributions").

22 61. Plaintiff is informed and believes, and based thereon alleges, that the
23 Unlawful Distributions were made in violation of section 17704.05 of the California
24 Corporations Code.

25 62. Plaintiff is informed and believes, and based thereon alleges, that, at
26 all relevant times, Defendant knew the Unlawful Distributions were made in violation of
27 section 17704.05 of the California Corporations Code.

28 63. Plaintiff is informed and believes, and based thereon alleges, that the

1 Unlawful Distributions are voidable or subject to recovery, and that Defendant is liable for
2 return of the Unlawful Distributions, under sections 17704.05, 17704.06(a), and
3 17704.06(c).

4 64. Plaintiff is informed and believes that the Unlawful Distributions were
5 voidable under California Corporations Code §§ 17704.06 by one or more creditors who
6 held and hold unsecured claims against the Debtor that were and are allowable under 11
7 U.S.C. § 502 or that were and are not allowable only under 11 U.S.C. § 502(e). These
8 creditors include those creditors who are listed in the Debtor's schedules as holding
9 undisputed claims or who have filed proofs of claim against the Estate.

10 65. Plaintiff is informed and believes, and based thereon alleges, that,
11 based on the foregoing, Plaintiff may avoid the Unlawful Distributions.

12 **EIGHTH CLAIM FOR RELIEF**

13 **(Recovery of Avoided Transfers or Their Value Pursuant to 11 U.S.C. § 550(a))**

14 66. Plaintiff realleges and incorporates herein by reference each and
15 every allegation contained in paragraphs 1 through 65 as though set forth in full.

16 67. Each of the Preferential Transfers, the Constructive Fraudulent
17 Transfers, the Actual Fraudulent Transfers, and the Unlawful Distributions (each, a
18 "Transfer," and collectively, the "Transfers") is a transfer of the Debtor's interest in
19 property that should be avoided as set forth above and, based thereon, Plaintiff is entitled
20 to avoid all such Transfers, and each of them.

21 68. Plaintiff is informed and believes, and based thereon alleges, that
22 Defendant is an entity for whose benefit the Transfers were made and/or is a transferee
23 (initial, immediate, mediate and/or otherwise) of one or more of the Transfers, within the
24 meaning of 11 U.S.C. § 550(a). Based thereon, Plaintiff is entitled to recover the
25 Transfers, and each of them, or the value thereof, together with interest at the applicable
26 rate from the date of each Transfer for the benefit of the Estate.

NINTH CLAIM FOR RELIEF

(Preservation of Transfers Avoided Pursuant to 11 U.S.C. § 551)

69. Plaintiff realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 68 as though set forth in full.

70. Pursuant to 11 U.S.C. § 551, the Transfers, upon their avoidance, should be preserved for the benefit of the Estate.

TENTH CLAIM FOR RELIEF

(Accounting)

71. Plaintiff realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 70 as though set forth in full.

72. Plaintiff is informed and believes, and based thereon alleges, that Defendant has failed and continues to fail to remit to the Estate the funds comprising the Transfers.

73. Plaintiff is informed and believes, and based thereon alleges, that the information necessary for Plaintiff to determine the exact amount that are the subject of the Transfers are in the exclusive possession, custody, or control of Defendant.

74. Plaintiff is informed and believes, and based thereon alleges, that Defendant failed, and continues to fail, to provide Plaintiff an accounting such that Plaintiff could determine such amounts ("Accounting").

75. By this Complaint, Plaintiff demands an Accounting. Despite such demands, Defendant has failed and refused, and continues to fail and refuse, to render such Accounting or documents or information to Plaintiff.

ELEVENTH CLAIM FOR RELIEF

(Disallowance of Claim)

76. Plaintiff realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 75 as though set forth in full.

77. To the extent Defendant files a proof of claim, or otherwise asserts a claim, in the Bankruptcy Case, any such claim ("Defendant Claim") should be disallowed

1 in its entirety under 11 U.S.C. § 502(d).

2 **RESERVATION OF RIGHTS**

3 78. Plaintiff reserves the right to amend this Complaint to include, among
4 other things, (i) further information or allegations regarding any of the Transfers, (ii)
5 information, allegations, or claims for relief regarding any additional transfers, (iii)
6 modifications of and revisions to Defendant's name, (iv) additional defendants, and (v)
7 additional claims for relief, that may become known to Plaintiff at any time during this
8 adversary proceeding through formal discovery or otherwise, and for the amendments to
9 relate back to the date of filing of this Complaint.

10 79. Plaintiff reserves the right to bring all other claims for relief that
11 Plaintiff may have against Defendant, on any and all grounds, as allowed under the law
12 or in equity. Additionally, nothing contained in this Complaint shall be construed as a
13 waiver of Plaintiff's right to object to any proof of claim filed by Defendant on grounds
14 separate and apart from those alleged herein. Accordingly, Plaintiff reserves the right to
15 object, on any and all grounds, to any proof of claim filed by Defendant.

16 **WHEREFORE**, Plaintiff prays for judgment against Defendant as follows:

17 **ON THE FIRST CLAIM FOR RELIEF**

18 1. For a judgment and/or order that the 90-Day Preferential Transfers
19 are avoidable under 11 U.S.C. § 547(b);

20 **ON THE SECOND CLAIM FOR RELIEF**

21 2. For a judgment and/or order that the 1-Year Preferential Transfers
22 are avoidable under 11 U.S.C. § 547(b);

23 **ON THE THIRD CLAIM FOR RELIEF**

24 3. For a judgment and/or order that the 4-Year Constructive Fraudulent
25 Transfers are avoidable under 11 U.S.C. § 544 and California Civil Code § 3439.04(a)(2),
26 or providing any other appropriate remedy under California Civil Code § 3439.07;

27 **ON THE FOURTH CLAIM FOR RELIEF**

28 4. For a judgment and/or order that the 2-Year Constructive Fraudulent

1 Transfers are avoidable under 11 U.S.C. § 548(a)(1)(B);

2 **ON THE FIFTH CLAIM FOR RELIEF**

3 5. For a judgment and/or order that the 4-Year Actual Fraudulent
4 Transfers are avoidable under 11 U.S.C. § 544 and California Civil Code § 3439.04(a)(1),
5 or providing any other appropriate remedy under California Civil Code § 3439.07;

6 **ON THE SIXTH CLAIM FOR RELIEF**

7 6. For a judgment and/or order that the 2-Year Actual Fraudulent
8 Transfers are avoidable under 11 U.S.C. § 548(a)(1)(A);

9 **ON THE SEVENTH CLAIM FOR RELIEF**

10 7. For a judgment and/or order that the Unlawful Distributions are
11 avoidable and recoverable, and that Defendant is liable for the return of the Unlawful
12 Distributions, under Cal. Corp. Code §§ 17704.05, 17704.06(a), and 17704.06(c);

13 **ON THE EIGHTH CLAIM FOR RELIEF**

14 8. For a judgment and/or order that Plaintiff is entitled to recover each
15 of the Transfers, or the value thereof, from Defendant under 11 U.S.C. § 550;

16 **ON THE NINTH CLAIM FOR RELIEF**

17 9. For a judgment and/or order that the Transfers, and each of them,
18 are preserved for the benefit of the Estate;

19 **ON THE TENTH CLAIM FOR RELIEF**

20 10. For a judgment and/or order compelling Defendant to provide
21 Plaintiff with an Accounting;

22 **ON THE ELEVENTH CLAIM FOR RELIEF**

23 11. For a judgment and/or order disallowing any Defendant Claim;

24 ///

25 ///

26 ///

27 ///

28 ///

ON ALL CLAIMS FOR RELIEF

12. For interest in an amount authorized by law;

13. For costs of suit incurred herein, including, to without limitation,
attorneys' fees, only to the extent permitted by applicable law; and

14. For such other and further relief as the Court deems just and proper.

DATED: December 3, 2020

SulmeyerKupetz
A Professional Corporation

By: /s/ Asa S. Hami
Asa S. Hami
Attorneys for Plaintiff, Howard M. Ehrenberg,
Chapter 7 Trustee

SulmeyerKupetz, A Professional Corporation
333 SOUTH GRAND AVENUE, SUITE 3400
LOS ANGELES, CALIFORNIA 90071-1406
TEL. 213.626.2311 • FAX 213.629.4520

B1040 (FORM 1040) (12/15)

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)		ADVERSARY PROCEEDING NUMBER (Court Use Only)
PLAINTIFFS HOWARD M. EHRENBURG, solely in his capacity as chapter 7 trustee,	DEFENDANTS BENCION JAKOBOVITS, an individual,	
ATTORNEYS (Firm Name, Address, and Telephone No.) Daniel Lev (CA Bar No. 129622) dlev@sulmeyerlaw.com Asa S. Hami (CA Bar No. 210728) ahami@sulmeyerlaw.com SulmeyerKupetz A Professional Corporation 333 South Grand Avenue, Suite 3400 Los Angeles, California 90071-1406 Telephone: 213.626.2311 Facsimile: 213.629.4520	ATTORNEYS (If Known)	
PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input type="checkbox"/> Other <input checked="" type="checkbox"/> Trustee	PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input checked="" type="checkbox"/> Creditor <input checked="" type="checkbox"/> Other <input type="checkbox"/> Trustee	
CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED) COMPLAINT FOR: (1) AVOIDANCE AND RECOVERY OF PREFERENTIAL TRANSFERS; (2) AVOIDANCE AND RECOVERY OF FRAUDULENT TRANSFERS; (3) AVOIDANCE AND RECOVERY OF UNLAWFUL DISTRIBUTIONS; (4) PRESERVATION OF AVOIDED TRANSFERS; (5) ACCOUNTING; AND (6) DISALLOWANCE OF CLAIMS		
NATURE OF SUIT (Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)		
FRBP 7001(1) – Recovery of Money/Property <input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property <input checked="" type="checkbox"/> 12-Recovery of money/property - §547 preference <input checked="" type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input checked="" type="checkbox"/> 14-Recovery of money/property - other FRBP 7001(2) – Validity, Priority or Extent of Lien <input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property FRBP 7001(3) – Approval of Sale of Property <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h) FRBP 7001(4) – Objection/ Revocation of Discharge <input type="checkbox"/> 41-Objection/re vocation of discharge - §727(c),(d),(e) FRBP 7001(5) – Revocation of Confirmation <input type="checkbox"/> 51-Revocation of confirmation FRBP 7001(6) – Dischargeability <input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims <input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny (continued next column)	FRBP 7001(6) – Dischargeability (continued) <input type="checkbox"/> 61 -Dischargeability- §523(a)(5), domestic support <input type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury <input type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan <input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support) <input type="checkbox"/> 65 -Dischargeability - other FRBP 7001(7) – Injunctive Relief <input type="checkbox"/> 71 -Injunctive relief- imposition of stay <input type="checkbox"/> 72-Injunctive relief - other FRBP 7001(8) Subordination of Claim or Interest <input type="checkbox"/> 81 -Subordination of claim or interest FRBP 7001(9) Declaratory Judgment <input type="checkbox"/> 91 -Declaratory judgment FRBP 7001(10) Determination of Removed Action <input type="checkbox"/> 01 -Determination of removed claim or cause Other <input type="checkbox"/> SS-SIPA Case - 15 U.S.C. §§78aaa <i>et seq.</i> <input type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)	
<input type="checkbox"/> Check if this case involves a substantive issue of state law <input type="checkbox"/> Check if a jury trial is demanded in complaint	<input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23 <input checked="" type="checkbox"/> Demand: No less than \$70,000	
Other Relief Sought For interest and costs of suit.		

B1040 (FORM 1040) (12/15)

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR Philmar Care, LLC		BANKRUPTCY CASE NO. 6:18-bk-20286-WJ
DISTRICT IN WHICH CASE IS PENDING Central	DIVISION OFFICE Riverside	NAME OF JUDGE Wayne Johnson
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISION OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF) /s/ Asa S. Hami		
DATE December 3, 2020	PRINT NAME OF ATTORNEY (OR PLAINTIFF) Asa S. Hami	

INSTRUCTIONS

The filing of a bankruptcy case creates an “estate” under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor’s discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 1040, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court’s Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 1040 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff’s attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and Defendants. Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.